

# **3 FAM 5130 CONDUCT OF EMPLOYEE ORGANIZATIONS AND MANAGEMENT**

## **3 FAM 5131 STANDARDS OF CONDUCT FOR ORGANIZATIONS**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

a. The Department shall accord recognition only to a labor organization that is free from corrupt influences, and influences opposed to basic democratic principles. Except as provided in this section, an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for:

(1) The maintenance of democratic procedures and practices, including-

—Provisions for periodic elections to be conducted subject to recognized safeguards; and

—Provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings.

(2) The exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) The prohibition of business or financial interest on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

b. A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles, if there is reasonable cause to believe that:

(1) The organization has been suspended or expelled for, or is subject to other sanctions by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements; or

(2) The organization is in fact subject to influences that would preclude recognition.

c. A labor organization which has or seeks recognition as a representative of employees shall file financial and other reports with the Assistant Secretary of Labor for Labor-Management Relations, provide for bonding of officials and others employed by the organization and comply with trusteeship and election standards.

d. The Assistant Secretary of Labor shall prescribe such additional regulations as are necessary to carry out this subchapter. Complaints of violations in this subchapter shall be filed with the Assistant Secretary. In any matter arising under this subchapter, the Assistant Secretary may require a labor organization to cease and desist from violations of this subchapter and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this subchapter.

### **3 FAM 5132 REPRESENTATION RIGHTS AND DUTIES**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

a. A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

b. An exclusive representative shall be given the opportunity to be represented at:

(1) Any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance or any personnel policy or practice or other general condition of employment; and

(2) Any examination of an employee by a Department representative in connection with an investigation if:

- The employee reasonably believes that the examination may result in disciplinary action against the employee; and
- The employee requests such representation.

(3) The Department shall annually inform employees of this right.

c. The rights of an exclusive representative shall not preclude a member of the Foreign Service from:

(1) Being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance proceeding under chapter 11 of the Act; or

(2) Exercising grievance or appeal rights established by law, rule, or regulation.

d. Any member of the Service who is a citizen of the United States has the right to grieve allegedly wrongful disciplinary action against the member. The grievant has the right to a representative of the grievant's own choosing at every stage of the grievance procedures.

e. Civil Service employees cannot choose to be represented by an attorney or representative other than the exclusive representative in negotiated grievance or arbitration procedures.

## **3 FAM 5133 UNFAIR LABOR PRACTICES**

### **3 FAM 5133.1 By the Department**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

It shall be an unfair labor practice for the Department to:

(1) Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under these regulations and applicable statutes;

(2) Encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) Sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) Discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under these regulations and applicable statutes;

(5) Refuse to consult or negotiate in good faith with a labor organization;

(6) Fail or refuse to cooperate in impasse procedures and impasse decisions;

(7) Enforce any rule or regulation (other than a rule or regulation implementing 5 U.S.C. 2302) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) Fail or refuse otherwise to comply with any provision of chapter 10 of the Act or 5 U.S.C. chapter 71.

### **3 FAM 5133.2 By Labor Organizations**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

It shall be an unfair labor practice for a labor organization to:

(1) Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under these regulations or applicable statutes;

(2) Cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under these regulations or applicable statutes;

(3) Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) Discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) Refuse to consult or negotiate in good faith with the Department;

(6) Fail or refuse to cooperate in impasse procedures and impasse decisions;

(7) (a) Call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be considered an unfair labor practice); and (b) To condone any unfair labor practice described herein by failing to take action to prevent or stop such activity;

(8) Deny membership to any employee in the unit represented by the labor organization except:

(9) For failure to tender dues uniformly required as a condition of acquiring and retaining membership; or

(10) In the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and applicable statute.

### **3 FAM 5133.3 Acceptable Practices**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

The expression of any personal view, argument, or opinion, or the making of any statement which:

(1) Publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) Corrects the record with respect to any false or misleading statement made by any person; or

(3) Informs employees of the Government's policy relating to labor-management relations and representation; if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not:

(a) Constitute an unfair labor practice under this chapter; or

(b) Constitute grounds for the setting aside of any election conducted under this chapter.

### **3 FAM 5134 DUES COLLECTION**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

a. If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in this section, any such assignment may not be revoked for a period of one year from its execution.

b. An assignment for deduction of dues shall terminate when:

(1) The labor organization ceases to be the exclusive representative;

(2) The individual ceases to receive a salary from the Department; or

(3) The individual is suspended or expelled from membership in the exclusive representative.

### **3 FAM 5135 USE OF OFFICIAL TIME**

*(TL:PER-238; 1-30-95)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee would otherwise be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in section 5135a, the FSLRB for Foreign Service employee or the FLRA for Civil Service employees shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before it shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in sections 5135a, b, and c, any employee representing an exclusive representative, or engaged in any other matter covered by chapter 10 of the Act or by chapter 71 of the CSRA shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

### **3 FAM 5136 THROUGH 5139 UNASSIGNED**